

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTOPHER J. WALSH, as he is ADMINISTRATOR,
CONSTRUCTION TEAMSTERS HEALTH AND
WELFARE FUND and INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, LOCAL 379,
Plaintiffs

C.A. No. 04-12053 GAO

vs.

BAY STATE SWEEPING & CONSTRUCTION CORP.,
Defendant

and

EASTERN BANK,
Trustee

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Upon the Complaint and Exhibits attached thereto, the Affidavit and Memorandum in support of their Motion for Preliminary Injunction, Plaintiff Christopher J. Walsh, as he is Administrator, pursuant to §502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1132(a)(3), and Rule 65(a), Federal Rules of Civil Procedure, respectfully requests this Court to enter a Preliminary Injunction enjoining defendant Bay State Sweeping and Construction Corp. from refusing to permit an audit of its books and records.

As grounds therefore, Plaintiff states as follows:

- 1) Based on the foregoing Complaint, Exhibits and Affidavits, Plaintiff has exhibited a likelihood of success on the merits.
- 2) Unless enjoined by this Court, the defendant will continue to ignore its obligations under the terms of the Employee Retirement Security Act of 1974, as amended ("ERISA"), and of the Restated Agreement and Declaration of Trust of the Health and Welfare Fund, to which it is bound, to permit auditors to audit its books in order to verify whether it made all required contributions to the appropriate funds.

- 3) There is no adequate remedy at law.
- 4) The defendant's refusal to permit an audit will result in irreparable injury, loss, and damage to Plaintiff.
- 5) The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the defendant but will prevent irreparable injury to Plaintiff, and would further the public interest.

WHEREFORE, Plaintiff moves this Court to grant a preliminary injunction compelling the defendant and its agents to permit an audit of its books and records for the period January 1, 2000 to the present to determine the amount, if any, defendant owes Plaintiff Fund. Plaintiff further requests that it be excused from posting a bond.

Respectfully submitted,

CHRISTOPHER J. WALSH, as he is
ADMINISTRATOR, of the CONSTRUCTION
TEAMSTERS HEALTH AND WELFARE
FUND, et al,

By their attorneys,

/s/ Gregory A. Geiman
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Dated: January 11, 2005

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiff's Motion for Preliminary Injunction has been served by certified and first class mail upon the defendant, Bay State Sweeping and Construction Corp. at 369 3rd Street, Everett, MA 02149 this 11th day of January, 2005.

/s/ Gregory A. Geiman
Gregory A. Geiman, Esquire

GAG/gag&ts
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